

**FILED**

APR 18 2008

APR 18 2008 *new*

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**MICHAEL W. DOBBINS**  
**CLERK, U.S. DISTRICT COURT**

<b>United States District Court</b>		District <b>NORTHERN DISTRICT OF ILLINOIS</b>	
Name of Movant <b>ARIS SANTIAGO</b>		Prisoner No. <b>18854-424</b>	Case No. <b>06-CR-519-1</b>
Place of Confinement <b>UNITED STATES PENITENTIARY MARION</b>			
UNITED STATES OF AMERICA		V. <b>ARIS SANTIAGO</b> (name under which convicted)	
<b>MOTION</b>			
1. Name and location of court which entered the judgment of conviction under attack <u><b>NORTHERN DISTRICT</b></u> <u><b>OF ILLINOIS, CHICAGO, IL.</b></u>			
2. Date of judgment of conviction _____			
3. Length of sentence <u><b>96 months</b></u>			
4. Nature of offense involved (all counts) <u><b>"Felon in possession of a firearm"</b></u> <u><b>18 U.S.C. 922 (g)(1) Count 1.</b></u>			
<b>08CV2236</b> <b>JUDGE LEFKOW</b> <b>MAG. JUDGE VALDEZ</b>			
5. What was your plea? (Check one)			
(a) Not guilty <input type="checkbox"/>			
(b) Guilty <input checked="" type="checkbox"/>			
(c) Nolo contendere <input type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:			
_____			
_____			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury <input type="checkbox"/>			
(b) Judge only <input type="checkbox"/>			
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

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9. If you did appeal, answer the following:

(a) Name of court UNITED STATES COURT OF APPEALS FOR THE 7th CIRCUIT

(b) Result Conviction Affirmed/Appeal Dismissed

(c) Date of result 10-11-07

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

Yes ☐ No ☐

(5) Result\_

(6) Date of result

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- ☒ (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Movant's conviction of "Felon in possession of

a firearm" by a convicted felon was obtained in violation  
of his Second amendment right to possess firearms.  
 Supporting FACTS (state *briefly* without citing cases or law):

18 U.S.C.922(g)(1) is in direct violation of the Second

Amendment "Right of the People to keep and bear arms"

See Pgs.2-3 in movant's Breif for supporting facts.

B. Ground two: Movant's sentence was rendered in violation of

His Sixth Amendment rights to the effective assistance of  
counsel for failure to object to violation of 5th Amend violation  
 Supporting FACTS (state *briefly* without citing cases or law):

Court erroneously implimented a 4 point additure in violation  
of movant's fifth amendment rights without an objection from  
Court appointed counsel. See Pgs. 4-8 in Movants Breif  
for supporting facts.

C. Ground three: Movant's Appealant counsel was ineffective in  
Violation of his Sixth Amendment rights (On Direct Appeal)

Supporting FACTS (state *briefly* without citing cases or law): Counsel assured movant  
He would raise pertinent issues that movant had and in turn  
filed "Ander's Breif" unbeknownst to movant failing to  
raise issues he assured movant he would. See Pgs.9-12 in  
Movant's Breif for supporting facts.

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\_\_\_\_\_  
 \_\_\_\_\_  
 D. Ground four: \_\_\_\_\_  
 \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

**Grounds 1-3 for ineffective assistance of Counsel.**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?  
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_  
 \_\_\_\_\_

(b) At arraignment and plea Paul Camarena, ESQ.  
 \_\_\_\_\_

333 W. North, No. 150  
 \_\_\_\_\_

(c) At trial Chicago, IL 60610  
 \_\_\_\_\_

(d) At sentencing - Same -  
 \_\_\_\_\_

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(e) On appeal -Same-

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

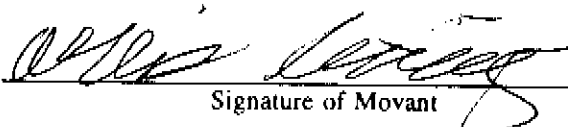
ARIS SANTIAGO /Pro se

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4-11-08

(date)

  
 Signature of Movant

**FILED** 

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

APR 18 2008 *aw*

ARIS SANTIAGO  
Movant

v.

THE UNITED STATES OF AMERICA  
Respondant

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case No. 06-CR-519-1 APR 18 2008

**08CV2236**  
**JUDGE LEFKOW**  
**MAG. JUDGE VALDEZ**

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MOVANT'S OPENING BRIEF IN SUPPORT OF  
28 U.S.C. Section 2255

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The Movant, ARIS SANTIAGO, acting pro se, Presents as follows in support of this Honorable Court granting the relief sought in the 28 U.S.C. section 2255 Motion.

Jurisdiction of the Court

This Court has Jurisdiction under 28 U.S.C. section 2255 and title 28 U.S.C. section 1331.

ISSUES PRESENTED

ISSUE I. MOVANT'S CONVICTION OF "FELON IN POSSESSION OF A FIREARM" 18 U.S.C. 922(g)(1) WAS OBTAINED IN VIOLATION OF THE SECOND AMENDMENT.

ISSUE II. MOVANT'S SENTENCE WAS RENDERED IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO MAKE PROPER OBJECTIONS TO ENHANCEMENTS AND EVIDENCE ENTERED IN VIOLATION OF HIS FIFTH AMENDMENT RIGHT TO DUE PROCESS.

ISSUE III. MOVANT'S APPEALATE COUNSEL WAS INEFFECTIVE IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL.



Statement of the case

On 7-20-06 Movant was arrested for "Possession of a firearm by a felon" 18 U.S.C.922(g)(1) and was placed into custody;

On 10-17 -06 Movant plead guilty in "open court" without the privilege of a stipulated plea agreement where he stated "I am guilty of knowing a firearm was present in the vehicle" and faced a statutory minimum-maximum penalty of 0-10 years of imprisonment;

On 1-26-07 Movant was sentenced for the said crime of "Felon in possession of a firearm by a felon" 18 U.S.C.922 (g)(1) which carries a term of imprisonment of 0-10 years and a base offense level of 24 in the U.S.S.G.'s.

The Government presented their case and treated the Court to a recitation of evidence they saw "relevant" to the instant offense citing: The Government had a Title III Wire tap and was interdicting into an "ongoing investigation" against the movant and his co-defendants.

Without an objection from movant's defense counsel the Government introduced evidence in a sentencing for a "Possession of a firearm by a felon" from said "Wire tap" that related to a alleged plot to a "Home invasion" that was allegedly spoken about by movant and co-defendants.

The Court then "Upward departed" from the base offense level 24 to a 4 point additur to level 28 and imposed a sentence of 96 months.

ISSUE I. MOVANT'S CONVICTION "FELON IN POSSESSION OF A FIRE ARM" 18 U.S.C.922(g)(1) WAS OBTAINED IN VIOLATION OF THE SECOND AMENDMENT.

Legal Argument

Movant asserts that his conviction (FELON IN POSSESSION OF A FIRE ARM 18 U.S.C.922(g)(1) ) is in direct violation of the Second Amendment in the U.S.Constitution, which is etched in stone and should be read literally:

ARTICLE II OF THE U.S.CONSTITUTION:

"A well regulated militia,being necessary to the security of a free State,the right of the people to keep and bear Arms,shall not be infringed."

18 U.S.C.922(g)(1)

"it shall be unlawfull for any person who has been convicted in any court of,a crime punni- shable by imprisonment for a term exceeding one year;

In the area of criminal law,federal crimes are soley creatures of statutes,Dowling V. United States,473 U.S. 207, 213 (1985); however congress' power to declair an "act" a crime ultimately must be grounded in some provision of the U.S.Constitution,United States V. Fox,94 U.S.670 (1878). The statute the Movant is charged,plead guilty to,and convicted of would "as applied" clearly exceed the scope of congress' enumerated power,thereby upsetting the delicate federal balance embodied in the U.S.Constitution.

Clearly the law is not changing,but rather the law has been subverted and used for what appears to be purposes of "policy"; in open and blatent violation of the U.S.Constitut- ion,Specificly ARTICLE II,State Constitutions,and unalienable rights. When violated would leave the statute "void ab initio" as well stated in 16 AM Jur 2d Section 256:

"The general rule is that an unconstitutional statitte weather federal or State,though having the form of law,is in reality no law but is wholly void,and in- effective for any purpose,since the unconstitution- ality dates from the time of it's enactment,and not merely from the date of the decision so branding it,

Continued from page two

...an unconstitutional law, in legal contemplation is as inoperative as if it has never been passed. Such statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

No repeal of such an enactment is necessary. Such an unconstitutional law is void, the general principle follows that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it... no one is bound to obey an unconstitutional law and no courts are bound to enforce it.

Movant did in fact plead guilty to "FELON IN POSSESSION OF A FIRE ARM" 18 U.S.C.922(g)(1) which has a "ACTUS REUS" element of "Possessing" not any "use" of such, and is a crime in violation of the U.S. Constitution.

Brady V. United States, 397 U.S. 742, 748, 90 S.Ct. 1469, 25 L.Ed.2d 749 (1970) "a general maxim of constitutional law provides that "waivers of constitutional rights not only must be voluntary but must be knowing intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences Id.

Movant had a constitutional right to keep and bear Arms (POSSESS) therefore he could'nt possibly waive a guaranteed right to do so, therefore his conviction of "Felon in possession of a fire Arm 18 U.S.C.922(g)(1)" violates the Second Amendment in the U.S. Constitution and his conviction should be vacated and dismissed immediately.

ISSUE II. MOVANT'S COUNSEL WAS INEFFECTIVE  
FOR FAILURE TO OBJECT TO ERRONEOUS  
ENHANCEMENT IMPLEMENTED AT SENTENCING  
WHICH WAS A VIOLATION OF HIS FIFTH  
AMENDMENT RIGHT TO DUE PROCESS.

Discussion

Movant does not dispute the fact that he did plead guilty to the "Possession of a fire arm by a felon" 18 U.S.C. 922(g)(1) which is a crime in violation of the Second Amendment "The right of the people to keep and bear Arms". A crime that did at the time carry a statutory minimum-maximum 0-10 years imprisonment and is statutorily subject to that range at the discretion of the Court taking into consideration factors set forth in 3553(a), and is not bound by any mandatory guideline.

Possession of a fire arm by a felon 922(g)(1) unlike other cases of 924 (c), conspiracies, and Racketeering related offenses which are continuing crimes, involving relevant conduct, "mere possession" would be a case of where or when and has a "ACTUS REUS" element which is controlled in the "act" of possessing.

Any evidence of relevant conduct other than this "ACTUS REUS" element would obviously require other substantive offenses that of which were not charged by a grand jury and presented in the indictment following the "Due process" that the Fifth Amendment Guarantees.

For the movant to plead guilty to a crime that is in violation of the Second Amendment "Possession of a fire arm by a felon" only to have at sentencing the Government enter into evidence to the Court, evidence of another crime ie. (Home invasion) a crime that was not charged by the Grand Jury would undermine the Due process that the Fifth Amendment Guarantees to individuals in all criminal prosecutions and deprive the individual that very right and defense counsel should have saw a "Red light" and at the very least objected.

Continued from page four

Movant asserts that his sentence was rendered in violation of his Sixth Amendment Rights to the effective assistance of counsel and Fifth Amendment rights for failure of his Attorney to raise any and all of movant's unalienable Constitutional Rights that he has taken an oath to uphold.

For failure to object to the 4 Point additue that the Court erroneously implimented (For an alledged Home invasion) where the court specifcly stated on Pg.23 in the sentencing transcript: 1. in light of everything that has been said here 2.it seems to me that the nature and circumstances of this offense

3.are essentially aggravated over what typically comes before 4.me for a crime of possession of a fire arm 5.in a typical case the firearm is'nt at the time 6.being used or about to be used to commit a crime,it is 7.someone who has been convicted of a felony who then posses 8.the firearm unlawfully.

This (use ie.Home Invasion AKA Relevant conduct) was not charged by the Grand Jury and submitted in an indictment and is a violation of the **Fifth Amendment**.

Notwithstanding the fact that the Honorable Judge Joan Leftkow who presided over the case was in fact a victim of similar conduct in her private life (Home Invasion) counsel should have moved the Court for a change of venue due to the bias and prejudice it would and did have against the movant prejudiced him greatly and would also hindered his fair and due process rights garunteed by the **Fifth Amendment**.

At sentencing at no time did thecourt address 3553(a) making the sentencing Guidlines advisory and stated specifcly several times throughout the hearing on Pgs.3,12,23,and 24 that she would "Have to make a guidline calculation" and sentence movant to such calculating a Base offense level of 25 plus a 4 point additue for relevant conduct =29 minus 3 points for acceptance of responsibillity ending in an offence level 26,84-105 months sentencing him to 96 months.

### Legal argument

The Sixth Amendment guarantees the right to the effective assistance of counsel in criminal prosecutions See, McMann-V. Richardson, 397 U.S. 759, 771 n. 14 (1970).

In Strickland V. Washington, 466 U.S. 668, 687 (1984), the Supreme Court established a two prong test to evaluate ineffective assistance of counsel claims to obtain the reversal of conviction, the defendant must prove; (1) the counsels performance fell below an objective standard of reasonableness Strickland, 466 U.S. at 687-88 and (2) that counsels deficient performance prejudiced the defendant, resulting in a unreliable or fundamentally unfair outcome in the proceedings, Strickland U.S. at 687.

U.S.C.S. Amend 5, n. 771, under our vaunted legal system, no man, however bad his behavior, may be convicted of a crime which he was not charged, proven, and found guilty in accordance with due process. Parr V. United States, (1960) 363 U.S. 370, 4 L.Ed. 2d 1277, 80 S.Ct. 1171.

The fifth Amendment guaranteed the Movant the right to be tried, sentenced, and convicted, for only those offenses presented in an indictment, returned by a Grand Jury, indictments may not be substantially Amended See. Stirone V. United States, 361 U.S. 212, 217-19 4 L.Ed. 2d 252, 80 S.Ct. 270 (1960) See also, United States V. Pigeon, 197 F.3d 879, 887 (7th Cir 1999), and United States V. Ramirez, 182 F.3d 544, 546 (7th Cir 1999).

### Performance prong of Strickland

Counsel had a duty to uphold the Constitution and to assure that said rights of his client were protected. Notwithstanding the fact that the Second Amendment clearly states "the right of the people to keep and bear arms shall not be infringed", counsel should have protected such rights by objecting to the charges against the movant long before a plea of guilty he did not, and on went the violation of his unalienable rights to a guilty plea to a "specific charge" that was handed down by the Grand Jury (Felon in possession of a firearm). If At the sentencing hearing the Government then introduced evidence of anything other than the "Possession of a firearm-

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.... the attorney in his sound mind and duty to protect his clients unalienable rights, and uphold the provisions set forth in the U.S. Constitution should have objected to any such evidence for it violated the due process clause the Fifth Amendment Guarantees to all criminal prosecutions. The fact that the defendant should be presented with any and all facts that would be used against him and, should only be sentenced "solely" to those very facts that were in his indictment handed down by the Grand Jury (Felon in possession of - a firearm 18 U.S.C.922(g)(1) ).

Also in light of the fact that the Honorable Mrs. Joan Leftkowitz was in fact a victim of the kind of activity that was alleged against the movant was the evidence introduced pursuant to the violation of the constitutional right counsel should have objected and moved the Court for a change of venue so that the accused (movant) could have his "fair" process in the action taken against him.

#### Prejudice prong of Strickland

In light of the fact the court was biased against the Movant and, was greatly prejudicial, it did not give it's determination pursuant to the factors set forth in 3553(a) but only to a "mandatory Guidelines scheme" See sentencing Transcript pgs. 3, 12, 23, and 24. It did let the Government introduce evidence to prove guilt of a crime other than the crime handed down by the Grand Jury and upward departed from the base offense level 24 based solely on the evidence of a crime not charged. (See S.Tr. )

The movant was subject to the Government's "throwing gasoline on a already burning fire" and subjecting the movant to great prejudicial error by way of a 4 point additur which the Court did in fact Constructively Amend the indictment handed down by the Grand Jury resulting in a 2 yr. additur to his sentence without any objection from an attorney who is an officer of the court and has a duty to uphold the U.S. Constitution in any context and protect his client from such prejudice.

Continued from page seven

For the prejudice suffered by the movant pursuant to erroneous representation of counsel the movant's sentences should be vacated,corrected,or set asside.



ISSUE III.MOVANT'S APPEALATE COUNSEL  
WAS INEFFECTIVE IN VIOLAT-  
ION OF HIS SIXTH AMENDMENT  
RIGHT TO THE EFFECTIVE AS-  
STANCE OF COUNSEL ON DIREC  
T APPEAL.

Discussion

Movant seeks to incorporat ground III along with ground I, and II and sets forth his Claims as follows:

Durring a prejudicial sentencing hearing after evidence was entered in violation of the movant's fifth Amendment rights the Court did not cite it's rullings based on a 3553(a) Post Booker Rule, but instead based it's rullings soley on the U.S.S.G's and upward departed based upon a preponderance of the evidence (See S.Tr.3,12,23, and 24).

The Court took into evidence in violation of the Fifth Amendment rights and upward departed a "4 point additur" to his base offense level impermissively and constructively amending the indictment handed down by the Grand Jury.

The sentence thus prejudiced the movant and denied him the right to a fair proceeding and due process on a "advisory" sentencing Guidline scheme. See United States V. Booker, 543, U.S. 220 (2005); also United States V. Hicks, 472, F.3d 1167, 1170 (9th Cir 2007) "Booker makes it clear the Guidelines are no longer mandatory in any context; and that it provides a constitutional statndard which courts may not ignor by treating "guidlines" as mandatory in any context. Thus policy statements are inconsistant with Booker that requiring guidlines as mandatory must give way.

Performance prong of Strickland

Movant asserts that he plead guilty to "Felon in possession of a firearm by a felon 18 U.S.C.922(g)(1) a crime that is in direct violation of the Second Amendment and it, like all other crimes has an "ACTUS REUS ELEMENT" of the mere "possession". If the Government had evidence and wanted to charge him with another crime which they did not, the let the indictment reflect, which it does not. Instead it alledges a crime in direct violation of the Second Amendment.

Continued from page nine

The Court erroneously entered into evidence "phone calls" and evidence of other crimes ie. "Home invasion" treating a bias Court to prejudicial evidence his Attorney should of at the very least objected which he did not.

On Direct Appeal had attorney done "basic legal research" of relevant Supreme Court case laws he would have seen the need to raise these issues on Direct Appeal. Not only does he not raise the movant's issues, but he files a Ander's Brief unbeknownst to the movant and "white washes" his appellate rights. Which he expressly assured movant he would (See Exhibits A-B)

#### Prejudice prong of Strickland

Movant is in "privity" with said Attorney on Direct Appeal and speaks "by and through" him to the Courts. For failure to raise any and all of movant's appellate issues which he obviously had he thus "waived" such issues. Not only does appellate counsel waive the issues he filed a motion pursuant to Anders V. California, 386 U.S. 738, 18 L.Ed.2d 493, 875 S.Ct. 1396 (1967).

~~Claims of ineffective assistance of counsel are generally limited to collateral review and ordinarily will not be considered on Direct Appeal~~ See United States V. Gambino, 788 F. 2d 938, 950 (3rd Cir. 1986) There is a narrow exception to this rule when the defendant raises an objection at trial or when the record clearly reflects the grounds for the ineffective assistance claim. See United States V. Gwiazdzinski, 141 F.3d 784, 789 (7th Cir. 1998)

It is obvious that when a Amendment is clearly violated in the proceeding which is commonly practiced by the Government that it is the duty of defense counsel to defend the clients whom they are signed on to defend. If they do not it clearly establishes that very ineffectiveness that the Sixth Amendment guarantees

movant asserts that he has the right to the effective assistance of counsel on direct appeal as he does for trial and pre-trial litigation and sentencing. Strickland V. Washington, 466 U.S. 668.

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Movant asserts that Amendment of an indictment is reversible error per se, since amendment "usurps" constitutionally guaranteed role of the Grand Jury See. United States V. Koen- 31 F.3d 711 (8th Cir. 1994) in this case vacation of movant's sentence is required instead of reversal of conviction because indictment was not amended until after the guilty plea which movant expressly waived his right to a Jury trial and only affected his sentencing.

The movant was entitled to be sentenced only for the crime charged by the Grand Jury in the indictment. See Kincade V. Sparkman, 175 F.3d 444 (6th Cir. 1999).

For failure of Appellate counsel to raise any and all issues that were clearly of the record movant's sentences should be vacated, set aside, or corrected.

Relief requested

Based upon the evidence clearly established in this motion that the Conviction and sentences were handed down pursuant to violations of the U.S. Constitution, and movant's unalienable rights movant's convictions should be over turned and/or sentences vacated and remanded for a re-sentencing.

In light of the "Open guilty plea" movant has entered into in open court to a charge of "Felon in possession of a firearm" (18 U.S.C.922(g)(1) a crime that does in fact violate the **Second Amendment**, the movant does respectfully request this Honorable court to hold him liable only for the "Crime" that he was charged for by the Grand Jury. Taking into consideration which the court did not factors set forth in 3553(a) that the U.S.S.G's are now under Booker "advisory" a relevant base offense level is 24. Given the fact that the movant did plead guilty in an expediate manner and recieved a 3 level downward departure should then be adjusted to Level 21. Given the fact that as of Nov. 1st 2007 the U.S.S.C. made amendments to the Criminal History calculations set forth in 4A1.1/4A1.2 of the U.S.S.G.'s in **Amendment No.709** the court calculated a Criminal History calculation of 8 pts. Since he was in fact given 2 pts. under 4A1.1(c) on page 6 of the pre-sentence report on 5-31-01 movant was found guilty of "theft" in case No.01-1218041 in Cook county, IL and recieved 12 months supervision supervision was discharged. And case No. 01-1288067 on 11-06-01 he should now have the priveledge of being relieved of 2pts which would lower his Criminal History category to III resulting in a base offense level 21 Criminal History Category III. 46-57 months.

Conclusion

For the reasons stated hercin movant's sentence and conviction should be vacated, corrected, or set asside or adjust the already implimented ledger to read as cited Base offense level 21 Criminal History III, 46-57 months respectively.

Respectfully submitted,

  
Movant  
ARIS SANTIAGO  
18854-424  
USP MARION

CERTIFICATE OF SERVICE

I certify, that I did, on this day 11 day of 4 2008 Mail a true, Correct, and complete copy of movant's 28 U.S.C. Section 2255 Motion and Breif to the Respondant by placing it in the U.S. mail, Postage pre-paid, and addressed as follows:

AUSA JULIE PETERS PEKRON  
219 South Dearborn  
U.S. Courthouse-5th floor  
Chicago, IL. 60604


  
Movant  
ARIS SANTIAGO  
18854-424  
USP MARION  
P.O. BOX 1000  
Marion, IL. 62959

Exhibit A

*Paul Camarena*  
*Attorney-at-Law*  
*Admitted to Practice Before the U.S. Dist. Ct. N. Dist. IL., the U.S. Ct. App. 7th Cir., and in NY*  
*333 W. North, No. 150*  
*Chicago, IL 60610*  
*PaulCamarena@PaulCamarena.Com*  
*(312) 493-7494*  
*(312) 602-4945 (fucsimile)*

February 10, 2007

MANUEL ARIS SANTIAGO  
REGISTER NUMBER 18854-424  
MCC CHICAGO  
METROPOLITAN CORRECTIONAL CENTER  
71 WEST VAN BUREN STREET  
CHICAGO, IL 60605

**RE: *United States of America v. Santiago Appeal***

Aris,

I have filed your Notice of Appeal with the District Court. I have also ordered the transcripts of the court proceedings in your case, including the January 26, 2007 Sentencing Hearing.

As I explained earlier, an appeal usually involves writing a brief where you tell the Court of Appeals that the District Court judge (Judge Lefkow) made some error, and you ask the Court of Appeals to correct that error. This brief will be due in 40 days. Usually, after the defense files their brief, the Prosecutor gets 30 days to file their response, and then the defense gets another two weeks to file their reply to the Prosecutor's response.

Finally, the Court of Appeals listens to Oral Arguments and then makes a decision. The Court of Appeals has not yet set a date for Oral Arguments.

Someone may have told you that you have to file the appeal brief within 30 days. This is absolutely not true. You have to file a "Notice of Appeal" within 10 days after the Sentencing Order is entered, and I did that on time. Then you have to file the appeal brief within 40 days (unless there is a continuance), and I will file this appeal brief on time too.

When I get the transcripts of the court dates, including the January 26, 2007 Sentencing Hearing, I will give copies to you. Also, I will communicate with you next week.

Paul Camarena

Exhibit B

*Paul Camarena*  
*Attorney-at-Law*  
*Admitted to Practice Before the U.S. Dist. Ct. N. Dist. IL., the U.S. Ct. App. 7th. Cir., and in NY*  
*333 W. North, No. 150*  
*Chicago, IL 60610*  
*PaulCamarena@PaulCamarena.Com*  
*(312) 493-7494*  
*(312) 602-4945 (facsimile)*

March 26, 2007

MANUEL ARIS SANTIAGO  
18854-424  
USP TERRE HAUTE  
U.S. PENITENTIARY  
P.O. BOX 12015  
TERRE HAUTE, IN 47801

**RE: Appeal before the Court of Appeals for the Seventh Circuit**

Aris,

I want to let you know the status of your appeal.

I have always said that I need the court transcripts in order to do your appeal.

However, the court reporter told me that she would not finish the transcripts until Friday March 23, 2007.


But your appeal was originally due on Monday March 26, 2007.

Because I would need more than one weekend to write the appeal, last week, I told the Court of Appeals that I did not have the transcripts and asked for more time to turn in the appeal.

The Court of Appeals agreed and set the new due date as April 25, 2007.

Also, the court reporter has told me that she now has finished the transcripts. So I will write your appeal by the new due date, April 25, 2007.

/s/Paul Camarena  
Paul Camarena

**FILED** 

APR 18 2008 *aw*

MICHAEL W. BOBBINS  
CLERK, U.S. DISTRICT COURT

APR 18 2008

STATE OF ILLINOIS

**08CV2236**  
**JUDGE LEFKOW**

**MAG. JUDGE VALDEZ**

COUNTY OF WILLIAMSON )

**AFFIDAVIT OF TRUTH OF Aris Santiago**  
**IN SUPPORT OF**  
**28 U.S.C. Section 2255**

"Indeed, no more that (AFFIDAVIT) is necessary to make a Prima facie case," (United States V. Kis, 658 F.2d 526, 536 (7th Cir. 1981) .cert denied 50 U.S.L.W. 2169 S.Ct. 3/22/82)

I, Aris Santiago, the undersigned do hereby say and affirm under the pains and penalties of perjury of the laws of the United States;

1. I am a flesh and blood human being with strong spiritual beliefs and do hereby Claim under the original jurisdiction and the U.S. Constitution of 1789 AD;

2. Am of lawful age and, otherwise competent to make these Claims and affidavit;

3. I was denied the effective assistance of counsel in the action taken against me in case No. 06-CR-519-01, which was a violation of my Sixth Amendment Rights;

4. I was denied the effective assistance of counsel on Direct Appeal in case No. 07-1304 which was a violation of my Sixth Amendment Rights;

5. My conviction of: "Felon of possession of a firearm" was rendered against me in violation of my Second Amendment Right to Keep and bear Arms;

6. That my Fifth Amendment Right to be presented with the crimes alleged against me on an indictment for due process was violated;

7. I did not knowingly and intentionally plead guilty to anything other than "Possessing a firearm" that of which is my unalienable right to possess.

8. The Government exceeded its limitation's set forth in the Second Amendment by charging me in Case No. 06-CR-519-01, "Felon in possession of a firearm";



Continued from page one

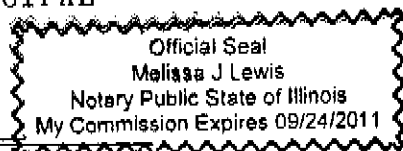
9. The Government exceeded it's limitation's set forth in the Fifth Amendment, by way of sentencing me for a crime that was not Charged in an indictment presented by the Grand Jury for due process;

10 The Court exceeded it's limitation's set forth by the Fifth Amendment, for accepting into evidence and, sentencing me to such evidence of a crime not charged in an indictment and presented to a Grand Jury for due process;

NOTICE TO THE PRINCIPAL IS NOTICE TO THE AGENT  
NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPAL  
EXODUS 20:15,16  
FURTHER AFFIANT SAYETH NAUGHT

Dated 4-07-08

Melissa J. Lewis



WITNESS My hand this 17<sup>th</sup> day of April

1s/ Aris Santiago  
ARIS SANTIAGO SUI JURIS

STATE OF ILLINOIS     )  
                                  )  
                                  ) : ss  
COUNTY OF WILLIAMSON)

On this 7<sup>th</sup> day of April, 2008 before me, the undersigned Notary Public, in and for the State of ILLINOIS, appeared Aris Santiago (1) personally knowing to me or (2) proved to me on the basis of satisfactory evidence, to be the person who's signature appears within the instrument and acknowledged to me that he executed it.